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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,310	10/22/2003	Boris Reydel	10000-232	8560
757 7590 03/09/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER WITCZAK, CATHERINE	
			ART UNIT	PAPER NUMBER
			3767	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/692,310

Applicant(s)

REYDEL ET AL.

Examiner

Catherine N. Witczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/27/2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/2/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

~~~~~ 3/3/07

## DETAILED ACTION

### *Election/Restrictions*

Applicant's traversal in the reply filed 12/26/2006 of the election/restriction requirement filed has been fully considered and is persuasive. The election restriction requirement has been withdrawn.

### *Claim Objections*

1. Claim 14 recites the limitation "inner member" in line 4. There is insufficient antecedent basis for this limitation in the claim.
2. Claim 22 recites the limitation "the endoscope" in line 1. There is insufficient antecedent basis for this limitation in the claim. The endoscope of claim 1 has not been positively recited.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 6-21, 23, 26, 28-38 and 41-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall (US 4,946,440).

Claim 1, 2, 6-11, 13-20, 23, 26, 29-32, 35-38, and 41-49: Hall discloses a flexible introducer member (12), a sleeve (90) having a plurality of apertures (102) with a first body portion attached to the introducer

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and an eversible second body portion (92) moveable in response to a second member (16) sized for introduction through the introducer member.

Claim 12: Hall discloses in column 5, line 60 that the internal passage is the duodenum.

Claims 21 and 28: Hall discloses in Figure 3 the introducer (12) including a second passageway.

Claims 33 and 34: Hall disclose in Figure 4 a third member (84) preloaded in the passageway of the second member (16).

4. Claims 1, 3, 4, 5, 22, 23, 39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bauer et al (US 5,389,089). Bauer discloses a flexible introducer member (27), a polymeric sleeve (45) with a first body portion attached to the introducer and an eversible second body portion moveable in response to a second member (43) sized for introduction through the introducer member.


*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall as modified by Hall.

Hall discloses the claimed invention, except for disclosing expressly the length of the sleeve being at least 20 cm in length and the introducer and second members comprising catheter having lengths



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of at least 150 cm. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to vary the lengths of the sleeve and catheters because Applicant has not disclosed that these specific dimensions provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a sleeve of at least 20 cm in length and catheters of 150 cm in length because these are ranges commonly used in the art. Therefore, it would have been an obvious matter of design choice to modify Hall to obtain the invention as specified in claims 24, 25, and 27.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine N. Witczak whose telephone number is (571) 272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Witczak*  
*2/3/02*

KEVIN C. SIMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Simons*

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